

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL ACTION NO. 3:99CR154

SHAWN BURTON

OPINION AND ORDER

This cause is before the Court on Burton's Motion for Copy of Transcripts at Government Expense, which was filed on July 14, 2006. the Court finds that the Motion is not well taken and should be denied.

This § 2255 habeas corpus cause of action is currently on appeal to the United States Court of Appeals for the Fifth Circuit. Burton seeks a copy of the district court record pertaining to several of the proceedings in the trial court, with the expense of said copies to be born by the government.

In Norton v. E. U. Dimazana, M.D., 122 F.3d 286 (5th Cir. 1997), the Fifth Circuit set forth the prerequisites that must be met before the government is required to bear the expense of a transcript fee on appeal. The court stated:

"Fees for transcripts furnished ... to persons permitted to appeal in forma pauperis shall ... be paid by the United States if ... a circuit judge certifies that the appeal is not frivolous (but presents a substantial question)." 28 U.S.C. § 753(f). In order to succeed on a motion for production of transcripts at government expense, a party must also show why the transcripts are

necessary for proper disposition of his appeal. Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126, 105 S.Ct. 2659, 86 L.Ed.2d 276 (1985).

Id. at 293.

In the subject case Burton has failed to specifically show why a copy of the requested transcripts would be necessary for proper disposition of his appeal. Therefore, the Motion of Defendant Burton for a Copy of Transcripts must be denied.

Based on the holdings presented above:

IT IS THEREFORE ORDERED that Burton's Motion for Copy of Transcripts at Government Expense (docket entry no. 116) is hereby denied.

SO ORDERED this the 15th day of August, 2006.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

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